

EXHIBIT B

From: Ryan Beckett <Ryan.Beckett@butlersnow.com>
Sent: Wednesday, September 6, 2023 6:32 PM
To: Esterkin, Jeremy B.; erosenberg@lawyerscommittee.org;
jnwachukwu@lawyerscommittee.org; David Rollins-Boyd; Ari Savitzky; Ming Cheung;
Robert B. McDuff; Carroll Rhodes; Lavelle, Jr., John P.; Jordan, Drew Cleary; Bhamdeo,
Benjamin; Antonellis, Celina
Cc: Tommie Cardin; Parker Berry; Rex Shannon; Cindy Grantham
Subject: RE: MS Redistricting Litigation - Meet and Confer re Privilege Logs [IWOV-
BUTLERSNOW.FID7560002]

[EXTERNAL EMAIL]

Jeremy,

That is correct. Both the Lt. Governor and Mr. Upchurch have documents being withheld on grounds of legislative privilege. We do not believe we have any obligation to provide a privilege log for those documents.

Best regards,

P. Ryan Beckett
Butler Snow LLP

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From: Esterkin, Jeremy B. <jeremy.esterkin@morganlewis.com>
Sent: Tuesday, September 5, 2023 7:58 PM
To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; erosenberg@lawyerscommittee.org;
jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky
<asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>;
Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary
<drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>; Antonellis, Celina
<celina.antonellis@morganlewis.com>
Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon
<Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>
Subject: [External Email] RE: MS Redistricting Litigation - Meet and Confer re Privilege Logs [IWOV-
BUTLERSNOW.FID7560002]

Dear Counsel –

Based on their responses to Plaintiffs' subpoenas and our prior correspondence, we understand that Mr. Upchurch and Lt. Gov. Hoseman are also withholding responsive documents based on assertions of legislative privilege, and that neither intends to provide a privilege log. Would you please let us know if that is not correct?

Kind regards,
Jeremy

Jeremy B. Esterkin

Morgan, Lewis & Bockius LLP

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From: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Sent: Thursday, August 17, 2023 10:53 AM

To: Esterkin, Jeremy B. <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky <asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>

Subject: RE: MS Redistricting Litigation - Meet and Confer re Privilege Logs [IWOV-BUTLERSNOW.FID7560002]

[EXTERNAL EMAIL]
Counsel,

Respectfully, we have stated our position and intend to stand on our objections. Best regards,

P. Ryan Beckett
Butler Snow LLP

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From: Esterkin, Jeremy B. <jeremy.esterkin@morganlewis.com>

Sent: Monday, August 14, 2023 2:58 PM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky <asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>

Subject: [External Email] RE: MS Redistricting Litigation - Meet and Confer re Privilege Logs [IWOV-BUTLERSNOW.FID7560002]

Counsel – thank you for the response. Before we move forward with a motion to compel, we wish to bring to your attention that your statement – “no mandate has issued to the District Court from the Fifth Circuit due to the appellants’ Petition for Rehearing *En Banc*. Thus, there is no direct guidance from the 5th Circuit yet on the issue of privilege logs in the context of an assertion of legislative privilege” – is not correct. Under [5th Circuit Rule 41.3](#), it is “the granting of a rehearing en banc,” not the mere request for a rehearing, that “vacates the panel opinion and judgment of the court” (emphasis added). Since the petition has not been granted, *Jackson Mun. Airport Authority v. Harkins*, 67 F.4th 678 (5th Cir. 2023), and its holding that “a privilege log is necessary to determine which of the requested documents and communications are protected by legislative privilege” where (as here) non-party legislators assert legislative privilege to withhold documents in response to a subpoena duces tecum, remains binding authority in the 5th Circuit. You also urge that Plaintiffs consider *La Union De. Pueblo Entero v. Abbott*, 68 F.4th 228 (5th Cir. 2023), but that case does not hold otherwise; in fact, that opinion repeatedly cites *JMMA* favorably. Further, the legislators in *La Union* did produce a privilege log, and the Court also affirmed that legislative privilege is “qualified,” not absolute. *Id.* at 236.

As we do not wish to burden the Court with an unnecessary motion, please advise by this Wednesday whether you will reconsider your position. I am happy to discuss further if a call would be useful.

Kind regards,
Jeremy

Jeremy B. Esterkin

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From: Ryan Beckett <Ryan.Beckett@butlersnow.com>

Sent: Friday, August 11, 2023 3:02 PM

To: Esterkin, Jeremy B. <jeremy.esterkin@morganlewis.com>; erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky <asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>

Cc: Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>; Cindy Grantham <Cindy.Grantham@butlersnow.com>

Subject: RE: MS Redistricting Litigation - Meet and Confer re Privilege Logs [IWOV-BUTLERSNOW.FID7560002]

[EXTERNAL EMAIL]

Counsel:

See attached. Best regards,

P. Ryan Beckett

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From: Esterkin, Jeremy B. <jeremy.esterkin@morganlewis.com>

Sent: Tuesday, August 8, 2023 4:25 PM

To: Ryan Beckett <Ryan.Beckett@butlersnow.com>; Tommie Cardin <Tommie.Cardin@butlersnow.com>; Parker Berry <Parker.Berry@butlersnow.com>; Cindy Grantham <Cindy.Grantham@butlersnow.com>; Rex Shannon <Rex.Shannon@ago.ms.gov>

Cc: erosenberg@lawyerscommittee.org; jnwachukwu@lawyerscommittee.org; David Rollins-Boyd <drollins-boyd@lawyerscommittee.org>; Ari Savitzky <asavitzky@aclu.org>; Ming Cheung <MCheung@aclu.org>; Robert B. McDuff <rmcduff@mscenterforjustice.org>; Carroll Rhodes <crhodes6@bellsouth.net>; Lavelle, Jr., John P. <john.lavelle@morganlewis.com>; Jordan, Drew Cleary <drew.jordan@morganlewis.com>; Bhamdeo, Benjamin <Benjamin.Bhamdeo@morganlewis.com>

Subject: [External Email] MS Redistricting Litigation - Meet and Confer re Privilege Logs

Dear Counsel:

We write to meet and confer regarding the objections and responses of the Mississippi Standing Joint Legislative Committee on Reapportionment and Redistricting ("MS SJLCRR"), Ben Collins, Representative Dan Eubanks, Senator Dean Kirby, Representative Charles "Jim" Beckett (fmr.), James F. Booth, Representative Philip Gunn, and Neal Smith (collectively, "Subpoena Recipients") to the subpoenas served by Plaintiffs in the matter *Mississippi State Conference for the National Association for the Advancement of Colored People, et al. v. State Board of Election Commissioners, et al.* (S.D. Miss. 3:22-cv-734-DPJ-HSO-LHS). Although the Subpoena Recipients have each objected and are apparently withholding responsive documents on the basis of both legislative and attorney-client privileges, no privilege logs were provided with the Subpoena Recipients' responses. Per FRCP 26(b)(5) and *Jackson Mun. Airport Authority v. Harkins*, 67 F.4th 678 (5th Cir. 2023), a party asserting either privilege is required to provide a log with sufficient information for the propounding party to assess the claim as to each document withheld. *See also* Subpoena Attachment A, Instruction No. 9. We therefore ask that you please produce logs with the required information no later than **August 28, 2023**, for MS SJLCRR, Mr. Collins, Rep. Eubanks, Sen. Kirby, Former Rep. Beckett, and Mr. Booth; and no later than **September 6, 2023**, for Rep. Gunn and Mr. Smith. If any of the Subpoena Recipients intends to assert that a log is not required, we would appreciate the courtesy of an earlier notification to avoid unnecessary delay in the resolution of the dispute.

If it would be helpful to discuss this matter further, I may be reached by email or at 213.680.6843.

Thank you,

Jeremy B. Esterkin

Morgan, Lewis & Bockius LLP

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